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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THOMAS BEKONO, Plaintiff, Cross-defendant and Appellant, v. ROHR, INC. et al., Defendants, Cross-complainants and Respondents.	D071861 (Super. Ct. No. 37-2013-00040946-CU-WT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Judith F. Hayes, Judge. Affirmed.

Thomas Bekono, in pro. per., for Plaintiff, Cross-defendant and Appellant.

Seyfarth Shaw LLP; Timothy Lee Hix and Kiran A. Seldon, for Defendants, Cross-complainants and Respondents.

Plaintiff Thomas Bekono, in propria persona, appeals from a judgment entered after the trial court granted summary judgment to Rohr, Inc. (Rohr), his former employer.[1] We affirm the judgment.

FACTUAL BACKGROUND

" 'Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion.' " (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 716-717.) We consider all the evidence in the moving and opposing papers, except evidence to which objections were made and sustained.[2] (*Id.* at p. 717; Code Civ. Proc., § 437c, subd. (c).)

Rohr is an aerospace manufacturing company based in Chula Vista, California. Bekono is an African-American man who was employed by Rohr between February 2001 and September 2012. Bekono worked in the areas of pricing and analysis.

From 2009 and on, Scott Trimlett supervised Bekono. Beginning in 2010, Bekono's behavior and demeanor towards his colleagues changed. Bekono told Trimlett that his colleagues were trying to sabotage his employment. In August 2010, Bekono

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1 Rohr did business as Goodrich Aerospace and/or Goodrich Aerostructures. The defendants and respondents in this appeal are Rohr and two individual employees of Rohr, Nevia Anderson and Michelle Jackson.

2 As we discussed *post*, the trial court sustained essentially all of defendants' objections to Bekono's evidence and overruled his objections to defendants' evidence. On appeal, Bekono does not challenge these evidentiary rulings as far as we can discern. Thus, because he submitted little or no admissible evidence to support his allegations, we draw the facts mostly from defendants' evidence submitted in support of their motion for summary judgment.

became extremely upset when he found a red-colored tag (used to mark unsafe equipment), dated February 2000, between a file cabinet and his desk. He believed that an unidentified coworker placed the tag on his desk to make fun of him. Because the incident upset Bekono, Trimlett reported it to human resources (HR). HR investigated Bekono's claim, including interviewing him and his colleagues, but could not substantiate Bekono's belief that his colleagues were trying to get him fired or that they purposefully placed a red tag in his workspace to taunt or discriminate against him.

The results of the HR investigation did not change Bekono's beliefs, and his work performance began to deteriorate. In November 2010, Bekono told his supervisor that he still thought "people" were talking about him in the hallways, were trying to ruin his reputation, and were trying to get him fired. HR met with Bekono again to discuss his concerns, but he provided very little or specific information about his claims. HR investigated Bekono's allegations and, again, could not substantiate his claims. Bekono's behavior remained erratic, and he appeared paranoid. He cried at work, was unable to concentrate, and told his supervisor and HR that he was the target of a "cleverly hidden conspiracy" to humiliate him. Bekono's work performance declined. He now required close supervision and repeated reminders to complete routine tasks despite his many years of experience. When Trimlett discussed Bekono's wavering performance with him, Bekono would become emotional and leave the office. Sometimes Bekono would retreat to his car during work hours and sufficiently recompose himself. On other occasions, Bekono was incapable of returning to work.

By November 2011, Bekono's erratic behavior and job performance had deteriorated to the point that his colleagues became nervous and feared for their safety. Bekono's supervisors were unsure about Bekono's ability to perform his job. After hearing extensive concerns from various sources, Rohr, through HR employee Anderson, instructed Bekono to participate in a fitness-for-duty evaluation (FFD) to determine if he was able to perform the essential functions of his job with or without accommodation and whether he was a danger to himself or others. The FFD was scheduled for November 4, 2011, with a physician retained by Rohr for purposes of the FFD, Dr. Donald Kripke. During a 20-minute meeting with Dr. Kripke, Bekono refused to answer basic demographic questions. Because he refused to answer questions, and Dr. Kripke did not otherwise have Bekono's medical records, Dr. Kripke was unable to offer any opinion as to Bekono's fitness for duty.

On Friday, January 13, 2012, at his annual performance meeting, Bekono discussed his job performance with supervisor Trimlett. After the meeting, Trimlett happened to hear Bekono crying in the men's restroom and whispering, "God please save me from this place." Shortly after, Bekono told Trimlett he was leaving work after lunch. About 20 minutes later, Bekono returned to Trimlett's office in a highly agitated state to say he was not doing well. Trimlett proceeded to privately converse with Bekono for two hours, during which time Bekono broke down into heavy tears and said that his colleagues, who he would not name, were taunting and harassing him.

On Monday, January 16, 2012, Bekono did not show up to work. He called Trimlett to report that he went to the hospital over the weekend and had taken

medication, which made him sleepy. He thought he would be able to return to work the next day but, instead, he began a leave of absence. The Reed Group, Ltd. (Reed), a third party administrator of leave-related services for Rohr, processed and handled Bekono's medical leave.

On March 1, 2012, Bekono returned to work from his leave. Trimlett and HR remained concerned about Bekono's ability to perform his work duties and their safety. Rohr conditioned his continued employment on him completing the FFD. In the ensuing weeks and months, Bekono delayed in cooperating and/or refused to cooperate with completing the FFD. At times, he feigned a misunderstanding of the purpose for the FFD even though the purpose was clearly communicated to him. He became irrationally concerned that Dr. Kripke would share his medical information with Rohr. Bekono refused to release his medical information to Dr. Kripke. During a scheduled FFD, Bekono met with Dr. Kripke, but again declined to answer basic questions.

On March 28, 2012, during a conference call with Bekono and Dr. Kripke, Anderson assured Bekono that (1) she had never seen his medical information, (2) she was legally barred from doing so, and (3) Rohr had no interest in discovering Bekono's medical issues. She stressed that Bekono's medical information would be viewed only by Dr. Kripke, who would not share that information with Rohr. She explained that after the FFD, Dr. Kripke would simply tell Rohr whether Bekono was fit for duty and would not disclose any details about Bekono's health. Dr. Kripke also assured Bekono that only he would review Bekono's medical records. Bekono repeatedly acknowledged that he

understood the FFD was an evaluation as to whether he was fit to return to work.[3] Bekono, however, did not reschedule an exam.

On July 30, 2012, Anderson informed Bekono via letter that if he did not complete the FFD, Rohr would terminate his employment. The letter stated the requirements for Bekono to remain employed, including that he must (1) sign a written authorization releasing his medical information to Dr. Kripke, and (2) complete the FFD.

Thereafter, Bekono continued his refusal to sign any authorization form allowing a release of his medical information to Dr. Kripke. As a result, Dr. Kripke was unable to assess whether Bekono could perform the essential functions of his job, with or without any accommodations or whether he posed a threat to himself or others. Because he would not complete the FFD, Bekono was terminated on September 26, 2012.

PROCEDURAL BACKGROUND

In March 2013, Bekono initiated a lawsuit against Rohr, several of Rohr's affiliated corporate entities, Reed, about 30 of Bekono's former coworkers, and Dr. Kripke. In 2013 and 2014, after various demurrers were sustained, Bekono filed amended complaints. The operative complaint—the fourth amended complaint—was filed in September 2014. It alleged 20 causes of action against the corporate defendants and 10 former coworkers as follows: (1) violation of the Ralph Act (Civ. Code, § 51.7);

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[3] Unknown to Anderson or Dr. Kripke, and without their consent, Bekono secretly recorded this March 2012 conference call. Bekono recorded other calls as well without the participants' consent.

(2) violation of the Bane Act (Civ. Code, § 52.1); (3) race discrimination in violation of the Fair Employment and Housing Act (FEHA; Gov't Code, § 12940 et seq.); (4) national origin discrimination;[4] (5) racial harassment; (6) an "unlawful psychiatric exam"; (7) interference with the California Family Rights Act (CFRA; Gov't Code, § 12945.2); (8) perceived disability discrimination; (9) disability discrimination; (10) failure to accommodate a disability; (11) failure to engage in an interactive process; (12) wrongful termination in violation of public policy; (13) failure to investigate and prevent racial discrimination and harassment; (14) violation of the Confidentiality of Medical Information Act (CMIA; Civ. Code, § 56.26); (15) failure to release medical records in violation of the CMIA (Civ. Code, § 56.10); (16) invasion of privacy; (17) defamation (publication of private facts and false light); (18) retaliation; (19) intentional infliction of emotional distress; and (20) violation of the Unfair Competition Law (UCL; Bus. & Prof. Code, § 17200 et seq.).[5]

Meanwhile, defendants Rohr, Anderson, and Jackson filed a cross-complaint against Bekono for invasion of privacy (Pen. Code, §§ 632, 637.2), relating to six unauthorized phone recordings he made while employed at Rohr. On defendants' motion, the court granted summary judgment to them on their cross-complaint, based on

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4 The various forms of discrimination were alleged to be violations of FEHA.

5 Bekono filed the operative complaint in superior court case no. 37-2013-00040946-CU-WT-CTL (first case). He subsequently initiated another action against Rohr in superior court case no. 37-2014-00022441-CU-CR-CTL (second case), adding allegations that Rohr violated the UCL based on tax reporting errors. The first and second cases were consolidated for all purposes in April 2015.

undisputed evidence that Bekono made the recordings without the other parties' authorization or consent.

In 2015, the court granted summary judgment to administrator Reed on Bekono's claims that Reed (1) invaded his privacy, and (2) committed defamation (libel). Reed demonstrated as part of its summary judgment motion that Reed did not alter, improperly share, or otherwise misuse, Bekono's medical information while processing his request for disability benefits. Bekono appealed the judgment in Reed's favor, and this court affirmed the judgment. (*Bekono v. Reed Group, Ltd.* (Feb. 10, 2016, D067705) [nonpub. opn.].)

In February 2016, defendants Rohr and individual employees moved for summary judgment and/or summary adjudication on all causes of action in the operative complaint. In support of their motion, defendants submitted, inter alia, a memorandum of points and authorities; multiple employee declarations, including Trimlett and Anderson; declarations of Reed's employees; a declaration of Rohr's counsel; excerpts of Bekono's and Dr. Kripke's deposition transcripts; Bekono's, Trimlett's, and Anderson's e-mail communications; certain of Bekono's discovery responses; and numerous other documents that substantiated defendants' statement of facts.[6]

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6 In 2016, defendants also filed a motion for summary judgment on the pleadings as to Bekono's claim for a violation of the UCL from his second case, which was granted. The court's ruling was based on its previously sustaining an unopposed demurrer to Bekono's UCL claim in his first case without leave to amend and the doctrine of res judicata, which prevented Bekono from filing a new action alleging the same claim.

Bekono did not file a timely opposition to defendants' motion for summary judgment/adjudication. On November 7, 2016, defendants filed a "notice of plaintiff's nonopposition to defendants' motion for summary judgment . . . ," within which defendants stated that the court's docket did not reflect, and they had not been served with, a timely filed opposition brief. Nevertheless, on November 9, 2016, Bekono filed a document entitled "response in opposition to defendants' separate statement in support of motion for summary judgment . . . ," which, although late, was apparently accepted as an opposition brief. He also filed his own declaration in opposition to summary judgment, which attached several exhibits.[7]

Bekono filed a third document (also entitled "response in opposition to defendants' separate statement in support of motion for summary judgment . . . .") purporting to dispute and object to the material facts contained in defendants' statement of undisputed facts. The document is internally inconsistent and largely incomprehensible, including as to whether stated facts were actually disputed. For instance, as to one fact, Bekono's response included: "DISPUTED AS 'FACT'," "DISPUTED AS 'MATERIAL'," "EVIDENCE DISPUTED AS 'EVIDENCE,' " "EVIDENCE DOES NOT SUPPORT 'FACT'," *and* "UNDISPUTED IN ANY OTHER RESPECT."

On December 1, 2016, Bekono filed a motion for summary judgment on the pleadings, arguing that Rohr was required to, but did not, maintain workers' compensation insurance. Defendants opposed the motion.

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7 The exhibits were not given to defendants until December 1, 2016.

In January 2017, defendants filed their reply in support of the motion for summary judgment/adjudication, objections to Bekono's evidence, and other responses to Bekono's submissions. Defendants explained, in significant detail, why Bekono had failed to create triable issues of material fact and was improperly relying on his own subjective beliefs and speculation to defeat summary judgment. They further explained why Bekono's objections to defendants' evidence should be overruled.

On January 27, 2017, Bekono filed an ex parte application seeking leave to amend his opposition to defendants' motion for summary judgment. He claimed he needed more time to complete discovery, without stating why the discovery could not have been completed earlier. Defendants opposed the ex parte application, which the trial court denied.

After hearing oral argument on defendants' motion for summary judgment/adjudication, the court granted summary judgment/adjudication to defendants on all claims. It noted that Bekono had failed to oppose the sixth through 11th and 20th causes of action. Further, the court stated that "plaintiff's opposition papers are unintelligible and failed to comply with numerous procedural rules, including California Rules of Court, rule 3.1350(g). The [c]ourt has made every attempt to understand and consider plaintiff's arguments, however, given the manner in which the arguments and evidence were submitted, in stacks of loose papers, the [c]ourt was unable to discern plaintiff's positions." The court found that defendants "sustained their burden on summary judgment to demonstrate plaintiff cannot establish the essential elements of his claims against defendants" and that "plaintiff failed to sustain his burden on summary

judgment to create triable issues of material fact as to the essential elements of his causes of action." Further, the court entirely overruled Bekono's evidentiary objections to defendants' evidence and sustained defendants' objections to Bekono's evidence to the extent specified exhibits had been made available for review. It declined to rule on Bekono's motion for judgment on the pleadings, finding the motion had been rendered moot by the court's summary judgment ruling.

Judgment was entered accordingly for defendants and this appeal followed.[8]

DISCUSSION

A. *Bekono Has Failed to Meet His Burden on Appeal to Establish Reversible Error*

For the reasons explained *post*, Bekono's appellate briefing is so inadequate that we find he has abandoned and/or forfeited his contentions on appeal regarding summary judgment.

A judgment or order is presumed correct, and reversible error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "Though summary judgment review is de novo, review is limited to issues adequately raised and supported in the appellant's brief." (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 (*Christoff*).)

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8 Attached to Bekono's opening brief on appeal is his "declaration in support of opening brief," in which he appears to be presenting new evidence. On our own motion, we strike the declaration because it is not a proper submission to this court. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [absent exceptional circumstances, appellate court reviewing the correctness of a trial court's judgment considers only matters that were part of the record at the time the judgment was entered].)

On appeal, a party challenging an order has the burden to show error by making coherent legal arguments, supported by authority, or the claims will be deemed forfeited. (*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 743 ["Every argument presented by an appellant must be supported by both coherent argument and pertinent legal authority."]; *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, 689 [asserted grounds for appeal that "merely complain of error without presenting a coherent legal argument are deemed abandoned and unworthy of discussion"].) Self-represented parties are held to the same standards and procedural rules as parties represented by counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.)

An appellant's brief should "point out portions of the record that support the position taken on appeal. The appellate court is not required to search the record on its own seeking error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) The "failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119 (*Berger*).)

We have read and reread Bekono's opening and reply briefs and find that neither brief satisfies these settled appellate rules. Bekono cites some legal authorities, and elsewhere provides some record citations, but he fails to tie the two together with coherent legal arguments.

1.

Bekono's briefing fails to address the trial court's summary judgment ruling

For example, although Bekono recites the standard of review for an order granting summary judgment, he does not discuss how the trial court erred in its ruling. "[A]n appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal." (*Christoff, supra*, 134 Cal.App.4th at p. 125.)

Critically, Bekono's briefing fails to discuss what, if any, triable issues of fact remain on his causes of action. The trial court found that "plaintiff failed to sustain his burden on summary judgment to create triable issues of material fact as to the essential elements of his causes of action." The court also noted that Bekono's opposition papers were "unintelligible"—a statement with which we agree. Bekono cannot complain now of his failure to create triable issues of fact. (E.g., *Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1014 [issue of fact is not created by speculation, conjecture, imagination, or guesswork; it can be created only by a conflict in the evidence submitted to the trial court in support of and in opposition to the motion].)

2.

Bekono's briefing ignores the trial court's evidentiary rulings

Bekono neglects to mention in his briefing that defendants filed extensive objections to the evidence he submitted in opposition to the summary judgment motion and that the objections were sustained. Conversely, his objections to defendants' evidence were completely overruled. On appeal, Bekono does not mention these evidentiary rulings or contend they were erroneous. The effect of the trial court's

evidentiary rulings is that Bekono submitted little or no admissible evidence to oppose defendants' motion for summary judgment.

To create a triable issue of material fact, a party opposing summary judgment must present admissible evidence. (Code Civ. Proc., § 437c, subd. (d).) The opposing party cannot defeat summary judgment by resting on his own pleadings, even if those pleadings are verified. (Code Civ. Proc., § 437c, subd. (p); *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7.) In reviewing an order granting summary judgment, an appellate court does not consider evidence the trial court excluded. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65-66.)

Here, Bekono's appellate briefing frequently cites to inadmissible evidence, documents he did not submit to the court in opposition to summary judgment, or parts of the record that in no way support the stated fact or proposition. He has ignored the trial court's evidentiary rulings, leaving it to this court to search the record to determine if any admissible evidence supports his arguments. However, "[i]t is not the function of this court to comb the record looking for the evidence or absence of evidence to support [a party's] argument." (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879; see Cal. Rules of Court, rule 8.204(a)(1)(C) [each factual reference must be supported by record citation].)

3.

Bekono's briefing contains no statement of facts or relevant procedural history

An appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2)(C).) However, *nowhere* in Bekono's appellate briefing did he provide a statement of facts. And we cannot discern the disputed facts from his opposition papers filed in the trial court. To the extent Bekono complains of procedural errors, his briefing contains no coherent procedural history, or any procedural history omits numerous events necessary to an understanding of his arguments. These omissions render Bekono's contentions on appeal unintelligible.

4.

Bekono's briefing fails to include discussion of the allegations/causes of action in the operative complaint

"The complaint limits the issues to be addressed at the motion for summary judgment. The rationale is clear: It is the allegations in the complaint to which the summary judgment motion must respond." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.)

Defendants moved for summary judgment/adjudication on the 20 causes of action alleged in Bekono's operative complaint. His appellate briefing, however, does not coherently summarize the facts or law supporting the 20 causes of action. Further, Bekono's briefing fails to explain to which cause(s) of action his various arguments relate. Thus, it is not clear on which causes of action he maintains defendants did not

meet their burden on summary judgment/adjudication and/or on which causes of action he maintains he raised a triable issue of material fact. As defendants point out, there were numerous causes of action that Bekono did not oppose at the summary judgment stage (e.g., disability discrimination) and which he again did not discuss on appeal. This court is not tasked with attempting to make sense of Bekono's incoherent legal arguments by linking them with one or more causes of action to which they might pertain.

Because of the significant deficiencies in Bekono's briefing, he has failed to advance "any pertinent or intelligible legal argument" relating to the court's order granting summary judgment and has accordingly abandoned or forfeited his arguments. (*Berger*, *supra*, 163 Cal.App.3d at p. 1119.) Alternatively, he has failed to demonstrate reversible error in the court's order granting summary judgment to defendants.

B. *Bekono's List of "Issues and Questions Raised on Appeal"*

Although we are significantly hindered for the reasons discussed *ante*, we will strive to address a list of eight numbered questions contained in Bekono's opening brief (under the heading, "issues and questions raised on appeal") to the extent we understand the issue and it has not been forfeited.

1.

Bekono's first listed issue is "[w]hether the facts admitted in respective [d]efendants' answers entitle [a]ppellant to a judgment on all the initial complaint's causes of action, if properly pled the operative [complaint], including punitive damages."

It appears that Bekono is asking this court to determine whether he is entitled to judgment based on the allegations of his initial complaint and the admitted facts from

defendants' answers. This issue is forfeited because it was never presented to the trial court. (E.g., *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1192 [argument not raised in opposition to a demurrer is forfeited].) Moreover, even assuming the issue is properly before us, it has no merit. Based on our independent review of defendants' answers, defendants unequivocally denied all alleged unlawful, wrongful, or improper conduct. Thus, Bekono was not entitled to judgment based on the specified pleadings. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 ["judgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution"].)

2.

Bekono's second issue he listed in his opening brief is "[w]hether the Kripke Authorization Form ('KAF') . . . is *prima facie* invalid." The citation he provides for the "Kripke Authorization Form" refers us to an exhibit he submitted in opposition to summary judgment. Defendants objected to the exhibit, which objection was sustained on grounds that Bekono had not established an adequate foundation to introduce, and/or had not sufficiently authenticated the document. As we have noted, the trial court's evidentiary rulings are not challenged on appeal; accordingly, we presume the document was properly excluded from evidence. Nevertheless, Bekono seems to complain of the overbroad wording on the purported authorization/release form, ignoring evidence that he refused to sign any alternative authorization form releasing records to Dr. Kripke or otherwise meaningfully participate in the FFD process.

We perceive no trial court error. Defendants introduced admissible evidence and cited legal authorities to support their position that requiring Bekono to complete the FFD was necessary under the circumstances. (E.g., *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 450 (*Kao*) ["FEHA permits an employer to require a medical or psychological examination of an employee if it can show that the examination is 'job related and consistent with business necessity.' "].) Rohr established its legitimate concerns about Bekono's ability to perform his job (e.g., based on his inability to focus, productivity declines, paranoia, panic attacks, and emotional breakdowns) and that Dr. Kripke needed to understand Bekono's medical history to perform the FFD, either verbally from Bekono or through him releasing his medical records. In turn, Bekono refused to provide his medical information. Although it was his burden to do so, he produced no admissible evidence to support that the FFD requirement was pretextual or that Dr. Kripke's need to understand his medical history was contrived. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 361 [on summary judgment, once employer has showed a nondiscriminatory reason for employee's termination, burden falls on employee to present evidence supporting a rational inference that intentional discrimination on prohibited grounds was the true cause of employer's actions].) Bekono has failed to establish reversible error.

3.

Bekono's third listed issue is "[w]hether Anderson, as a matter of law, attempted to obtain Bekono's signature on the [authorization form] by extortionate means, or did Plaintiff state a cognizable defense to the counterclaim of unlawful recording."

The trial court granted summary judgment to defendants on their cross-complaint based on six unauthorized phone recordings made by Bekono while he was employed at Rohr. Bekono maintained then, as he does now, that he made the recordings because he needed evidence of HR employee Anderson's committing "extortion" by requiring Bekono to sign a release of medical records for purposes of the FFD.

Bekono's argument is based on Penal Code section 633.5, which permits a party to surreptitiously record a confidential communication "for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion" or certain other specified felonies. (Pen. Code, § 633.5.) "Extortion is the obtaining of property or other consideration from another, with his or her consent . . . induced by a wrongful use of force or fear . . . ." (Pen. Code, § 518, subd. (a).) Fear, for purposes of extortion, may be induced by a threat to unlawfully injure the threatened person, accuse him or her of a crime, or expose some secret about the person. (Pen. Code, § 519; *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

Here, Bekono has failed to point us to any evidence in the record to support that Anderson was committing the crime of extortion. Defendants' evidence established that the relevant interactions between the two related to employment/personnel matters and

the FFD requirement. Thus, the court properly granted summary judgment to defendants on their cross-complaint.

4.

The fourth issue asserted by Bekono in his opening brief is "[w]hether [t]he [e]mployer's [d]iscovery [r]esponses to the insurance interrogatories establish doubt sufficient to present a tortious claim under the Workers' Compensation Act ('WCA') to the jury." This issue has been forfeited—Bekono's briefing does not specifically indicate to which "insurance interrogatories" or discovery responses he is referring and none of the 20 causes of action alleged in the operative complaint relate to workers' compensation.

In his briefing, Bekono makes repeated references to "Cal-OSHA" and argues that defendants were negligent in failing to provide him with a safe and healthful workplace. Defendants inform us that Bekono's claim under Cal-OSHA was dismissed in connection with their demurrer to the first amended complaint.

Indeed, the 33d cause of action in the first amended complaint alleged generally that Rohr violated California Occupational Health and Safety Act (Cal-OSHA; Lab. Code, § 6300 et seq.). To this cause of action, defendants demurred, arguing Bekono failed to state facts to constitute a violation of Cal-OSHA, i.e., he failed to identify some workplace health or safety problem, as opposed to harassment and discrimination. Bekono's opposition to the demurrer failed to illuminate how Cal-OSHA was violated. The trial court sustained defendants' demurrer without leave to amend, discussing that

"the allegations of the complaint sound in workplace harassment and not in violations of occupational health and safety pursuant to OSHA."

On appeal, Bekono fails to address or inform us of the trial court's demurrer ruling. He further fails to present any coherent theory of tort liability or negligence based on an alleged violation of Cal-OSHA and its regulations. The "Department of Industrial Relations, Division of Occupational Safety and Health (Division), shoulders primary responsibility for administering and enforcing [Cal-OSHA]. It does this through investigating workplaces and enforcing occupational safety and health standards. [Citations.] Many of these standards, commonly referred to as safety orders, are codified at title 8 of the California Code of Regulations." (*Rick's Elec. v. Occupational Safety & Health Appeals Bd.* (2000) 80 Cal.App.4th 1023, 1026; see also *Padilla v. Pomona College* (2008) 166 Cal.App.4th 661, 665-666 [plaintiff who suffered serious physical injuries from broken pressurized water pipe alleged that defendant failed to follow specified Cal-OSHA regulations that required utilities to be shut off, capped, or otherwise controlled during demolition].) Here, Bekono has failed to tie an alleged violation by Rohr of a safety order or regulation to his suffering of a "serious injury or illness" within the meaning of Cal-OSHA (Cal. Code Regs., tit. 8, § 330, subd. (h)). Nor does he explain how the court erred in determining that the crux of his complaint was employment discrimination. Bekono has failed to establish reversible error.

5.

The fifth asserted issue is "[w]hether Plaintiff is entitled to prosecute his UCL Suit ('Bekono_II')." "Bekono_II" is a reference to his second case filed against defendants. In the first case, the trial court sustained defendants' unopposed demurrer to Bekono's UCL claim without leave to amend. He does not challenge that ruling on appeal. Bekono then filed a second case against defendants, again alleging a UCL claim. The court granted defendants' motion for judgment on the pleadings as to the UCL claim in the second case based on the doctrine of res judicata. (See *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 792 ["The doctrine of res judicata prohibits a second suit between the same parties on the same cause of action"]; *Federal Home Loan Bank of San Francisco v. Countrywide Financial Corp.* (2013) 214 Cal.App.4th 1520, 1527 [discussing how res judicata bars a cause of action that was or could have been litigated in a prior proceeding].)

Bekono does not explain how the trial court's order dismissing his second case was erroneous. He has forfeited the issue and, in any event, has failed to establish any basis for reversal.

6.

Bekono's sixth issue is "[w]hether Plaintiff was entitled to FMLA/CFRA-controlled reinstatement in March 2012, upon completion of the approved leave and could the Defendants' Substance Abuse policy be the proximate cause of the post 2012 FMLA/CLRA-approved leave adverse actions."

On March 1, 2012, Bekono returned to work from medical leave. He contends he should have been reinstated to his prior position and that it was unlawful for Rohr to condition his continued employment on completing the FFD.

Bekono failed to oppose defendants' motion for summary judgment on his seventh cause of action for interference with the CFRA, and he did not raise any triable issues of material fact. Furthermore, as we have indicated, defendants established the FFD requirement was appropriate and necessary under the circumstances. Accordingly, this issue is without merit.[9]

7.

The seventh issue raised by Bekono in his briefing is "[w]hether this [c]ourt [will] give full force and effect to California constitutional and statutory issue provisions that where the trial is by jury, '[a]ll questions of fact are to be decided by the jury' . . . ."

This issue appears to derive from Bekono's contention that the trial court erred in granting summary judgment, which is a "mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 844.) As we have noted, Bekono failed to establish any triable issues of material fact. Thus, the court properly granted judgment to defendants without need for a trial.

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9 Bekono's briefing does not shed any light on why defendants' substance abuse policy could have been the cause of his termination and thus, we do not address that point.

8.

Bekono's final appellate question is "in light of the totality of the circumstances in the administrat[ion] of this case, could a person aware of the facts entertain the doubt that Judge Hayes acted with integrity, impartiality and competence in the management [of] Bekono's case?" As an example of the trial judge's partiality, he identifies what he claims was an improper denial of his request to "cure deficiencies" in his opposition papers to the defendants' motion for summary judgment. He argues the court should have granted him a continuance to complete additional discovery and amend his opposition.

A party seeking a continuance to oppose summary judgment " 'must show: (1) the facts to be obtained [through additional discovery] are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. . . . The decision whether to grant such a continuance is within the discretion of the trial court." (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633, capitalization omitted; Code Civ. Proc., § 437c, subd. (h).)

"[L]ack of diligence may be a ground for denying a request for a continuance of a summary judgment motion hearing." (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 257.) "A good faith showing that further discovery is needed to oppose summary judgment requires some justification for why such discovery could not have been completed sooner." (*Ibid*.)

Here, Bekono failed to establish he was entitled to a continuance. He did not explain (1) what facts he would obtain through additional discovery, (2) why he believed such facts might exist, or (3) why he could not have obtained the facts earlier. The case

had been pending since March 2013, the operative complaint was filed in September 2014, defendants' motion for summary judgment was filed in February 2016, and Bekono filed his opposition papers in November 2016. He had about nine months after defendants filed their motion for summary judgment to complete discovery and prepare an opposition to the motion. He had several years prior to the motion's filing to conduct discovery and gather evidence in support of his claims.[10] Our review of the record confirms that discovery occurred and oral depositions were taken. As a result, the trial court did not abuse its discretion in denying his request for a continuance. Furthermore, Bekono fails to point us to any other indicia of bias or incompetence by the trial judge. His final appellate issue is without merit.[11]

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[10] Bekono argues he only recently found the "Kripke Authorization Form" to serve on defendants as part of discovery and that the form was "central" to his case. He does not explain why the form was only recently found if it was given to him while he was employed. His untimely discovery speaks to an inexcusable lack of diligence in prosecuting the case.

[11] Any other possible arguments contained in Bekono's briefing are unintelligible and accordingly forfeited.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendants.

HUFFMAN, Acting P. J.

WE CONCUR:

IRION, J.

DATO, J.